DOCUMENT RESUME

ED 073 518 EA 004 808

TITLE	Fair Dismissal Procedures. Oregon School Study Council Bulletin, Volume 16, Number 5.
INSTITUTION	Oregon School Study Council, Eugene.; Oregon Univ., Eugene. Field Training and Service Bureau.
PUB DATE	Jan 73
NOTE	31p.; Presentation at Oregon Association of School Administrators first Professional Growth Seminar (Eugene-Portland-Pendleton, Oregon, October, 1972)
AVAILABLE FROM	Field Training and Service Bureau, College of Education, University of Oregon, Eugene, Oregon 97403 ($2.00)
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Boards of Education; Conference Reports; Costs; *Due Process; Educational Legislation; Guidelines; *State Laws; Superintendents; Supervisors; Teacher Discipline; *Teacher Dismissal; Teacher Evaluation; Teachers; *Tenure
IDENTIFIERS	*Oregon

ABSTRACT

This report discusses the new Oregon fair dismissal law, and examines the role of district administrators in the procedures leading to dismissal of certificated staff. The text provides (1) pertinent excerpts from the law, (2) major points of two dismissal case studies showing subtle variables in the dismissal process, (3) suggestions regarding evaluation procedures, (4) information on the costs of dismissal procedures, and (5) some alternatives to dismissal. Appendixes contain (1) a plan of assistance (suggested letter to teacher), (2) the procedures and a schedule for fair dismissal of both the permanent teacher and the probationary teacher, (3) a suggested letter from the superintendent, and (4) a suggested letter from a school board. (JF)

FILMED FROM BEST AVAILABLE COPY

FEB 12 1973

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY

ED 073518

OREGON SCHOOL STUDY COUNCIL

BULLETIN

EA 004 808

OREGON SCHOOL STUDY COUNCIL

College of Education

University of Oregon, Eugene, Oregon

FAIR DISMISSAL PROCEDURES

Field Training and Service Bureau
College of Education
University of Oregon
Eugene, Oregon

Vol. 16, No. 5 January, 1973

FAIR DISMISSAL PROCEDURES

Report of the first Professional Growth Seminar sponsored by the Oregon Association of School Administrators in October, 1972, held at Eugene, Portland, and Pendleton, Oregon

Conference planning by the

Field Training and Service Bureau
College of Education
University of Oregon
Eugene, Oregon

Individual Copy Price - $2.00

PREFACE

The Oregon Association of School Administrators sponsored its first professional growth seminars in Eugene, Portland, and Pendleton during October, 1972. The general topic of Fair Dismissal Procedures had been identified by Oregon superintendents as one of primary importance to superintendents, principals, and school board members. The seminars were planned by the College of Education's Field Training and Service Bureau at the University of Oregon in consultation with the OASA Committee on Advancement of School Administrators which is chaired by Tigard Superintendent, Delbert Fennell.

The seminar objectives were to examine the role of district administrators in the procedures leading to the dismissal of certified staff. The seminar dealt with the intent of the new Fair Dismissal Law, with a report on two dismissal cases, with the teacher evaluation program related to fair dismissal, with costs of fair dismissal procedures, and with alternatives to dismissal. As a result, the seminar was able to review the effects of the new law on school district personnel, school boards, and the public--and to suggest implications for all school districts in the areas of personnel management and improvement of the instructional staff.

All of the material in this report was taken from information shared by the presenters listed on the next page. Included are recommendations which should prove of value to superintendents and principals who are directly involved in the preparation of fair dismissal materials. This summary also should be of value to school board members and legislators reviewing fair dismissal actions as well as the implications of extra time demands of this evaluation process on all school district personnel involved.

This is not a comprehensive treatise on all aspects of Oregon's recent fair dismissal law. It is an informational document summarizing some significant issues identified by individuals involved in the design of the law and school district representatives involved in its early implementation. It points to significant factors school districts cannot afford to overlook and it may point to factors which need consideration in legislation yet to come.

The cooperation of President Vic Cullens of the Oregon Association of School Administrators, the planning and organizational work of Dr. R. L. "Ozzie" Rose and the editorial work of Miss Julieanne Thompson are acknowledged with appreciation.

Kenneth A. Erickson, Director
Field Training and Service Bureau
College of Education
University of Oregon

PROFESSIONAL GROWTH SEMINAR PARTICIPANTS

Major presentations were made by:

Wally Carson, Oregon Senate
Mary Rieke, Oregon House of Representatives
Milt Baum, Director, Executive and Legal Services, Oregon Board of Education
Alan Rousseau, Assistant Superintendent for Personnel, Beaverton
Carlos Taylor, Assistant Superintendent for Personnel, Portland

Presentations of the following also were appreciated:

Alex Byler, Oregon School Boards Association
Vic Cullens, Oregon Association of School Administrators
John Danielson, Oregon Education Association
Deb Fennell, Superintendent, Tigard
Howard Horner, Superintendent, David Douglas
Phyllis Hutchinson, American Federation of Teachers
Mike Irons, Superintendent, Ontario
Don Kipp, Superintendent, Madras
Ray Klappenbach, Superintendent, Bethel
Harold Kleiner, Deputy Superintendent, Portland
Barbara Kline, Oregon School Boards Association
Bob McKee, Superintendent, Roseburg
Gail Nicholson, Oregon School Boards Association
Roy Seeborg, Superintendent, Astoria
Ken Stanhope, Oregon Association of School Administrators
Jim Ulum, Oregon Association of School Administrators
Jake Veldhuisen, American Federation of Teachers
Ron Walk, Superintendent, LaGrande

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PERTINENT EXCERPTS FROM THE NEW FAIR DISMISSAL LAW	5
MAJOR POINTS OF TWO CASE STUDIES SHOWING SUBTLE VARIABLES IN THE DISMISSAL PROCESS	7
SUGGESTIONS REGARDING EVALUATION PROCEDURES	13
COSTS	17
ALTERNATIVES TO DISMISSAL	18
APPENDIX	
1 - Plan of Assistance (suggested letter to teacher)	21
2 - Procedures and Schedule for Fair Dismissal of Permanent Teacher and Probationary Teacher	23
3 - Suggested Letter by Superintendent (for suspension and dismissal)	25
4 - Suggested Letter by School Board (for dismissal)	26

INTRODUCTION

Without question, the matter of setting up fair procedures for dismissing employees is an administrative headache in any business. In school systems, the problem of "fairness" takes on the double focus of--fairness to the teacher, whose job should be shielded from mere whims and caprice of constituents; and fairness to the children, who may be seriously shortchanged by mediocre teaching.

In districts where teachers cannot receive permanent status, the problem is of smaller dimension, inasmuch as short-term contracts are usually given to the teacher and need not be renewed in case of incompetence or grievance.

School districts which do grant permanent positions to teachers must face the responsibility of careful teacher selectivity and judicious tenure granting. Administrators and school boards which are remiss in these matters--and even many who are most conscientious--are vulnerable to considerable trouble, ranging from unpleasant hassles to defeated court cases.

Recognizing the seriousness of the problem of fair dismissal of tenured teachers, the Oregon legislature adopted a bill last year (Senate Bill 131) which became law July 1, 1971. The bill affects twenty of the tenured school districts in Oregon. Although Bill 131 mainly affects districts with over 4,500 pupils in attendance, it made annual written performance evaluations of all certificated teachers mandatory in districts with over 500 average daily membership (ADM).

According to Senator Wally Carson, member of the Oregon legislature, Bill 131 was something of a compromise measure resulting from 1) a clamor to do something about tenure, 2) an attempt to streamline the dismissal procedure by giving the superintendent immediate authority, and 3) the desire to restrict the entire procedure into a limiting time schedule. Bill 131 was also a compromise between a bill suggesting repeal of tenure, and a movement to extend tenure.

This discussion of fair dismissal procedures is consistent with Bill 131, now the "Fair Dismissal Law." All administrators, particularly those individuals who are employed in the twenty districts affected by the new law, should be familiar with this law and aware of the pitfalls that they might encounter in putting it into practice. This report gives suggestions about the procedures that will point out some "pitfalls" in the event that taking legal action for dismissal becomes necessary.

The twenty districts completely affected by the new law are listed as follows:

District	ADM
Portland 1J	66,973
Salem 24J	22,266
Eugene 4J	20,581
Beaverton 48J	19,167
North Clackamas 12	13,475
Medford 549	10,017
Springfield 19	9,962
David Douglas 40	8,928
Corvallis 509J	7,271
Klamath School District	6,981
Roseburg 4	6,888
Lake Oswego 7	6,122
Coos Bay 9	6,068
Lincoln County Unit	5,595
Parkrose 3	5,359
Bend 1	5,076

District	ADM
Tigard 23J	5,042
Oregon City 62	5,031
Grants Pass 7	5,029
Gresham UH 2J	4,665

It is worthwhile for all districts, however, to take cognizance of the procedures set forth in the Fair Dismissal Law. Parts of the law may serve as guidelines for solving any teacher evaluation or dismissal problems.

In broad categories, factors that underlie failure among teachers include weakness in:

a) Scholastic background and knowledge
b) Instructional skill
c) Intelligence
d) Teacher-pupil relationships
e) Teacher-staff relationships
f) Community relationships
g) Professional attitudes
h) Personal characteristics
i) Social characteristics

Each one of these areas might be broken into numerous sub-categories, any one or a few of which might, if appraised negatively, provide sufficient grounds for dismissal from the job. As will be discussed later, it is hoped that all positive steps to upgrade the teacher's performance have been exhausted before legal action for dismissal becomes necessary.

The new Oregon Fair Dismissal Law states nine grounds for dismissal of permanent teachers (ORS 342.850):

1) Inefficiency
2) Immorality
3) Insubordination
4) Neglect of duty
5) Physical or mental incapacity
6) Conviction of a felony or of a crime involving moral turpitude

7) Inadequate performance
8) Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth.
9) Any cause which constitutes grounds for the revocation of such permanent teacher's teaching certificate.

The new Oregon law makes it possible to dismiss permanent teachers who are incompetent, provided the specified procedures and time schedules are followed. At this point, it is suggested that the reader look over the Procedures and Schedule for Fair Dismissal of Permanent Teacher and Probationary Teacher--found in Appendix 2 of this report. Also included are Appendixes 3 and 4 which give examples of suggested letters to the teacher in question from the superintendent and from the school board. And Appendix 1 is a suggested letter to the teacher--in which a supervisor may give a specific plan of assistance. While reading this report, it may be helpful to again refer to these sample letters suggested by the Oregon Board of Education as well as the procedures/time schedule.

PERTINENT EXCERPTS FROM THE NEW FAIR DISMISSAL LAW

342.895 Procedure for dismissal of permanent teacher.

(1) Authority to dismiss a permanent teacher is vested in the district school board subject to the provisions of the fair dismissal procedures of ORS 342.200 and 342.955 and only after recommendation of the dismissal is given to the district school board by the superintendent.

(2) At least 20 days before recommending to a board the dismissal of the permanent teacher, the district superintendent shall give written notice to the permanent teacher by certified mail of his intention to make a recommendation to dismiss the teacher.

The notice shall set forth the statutory grounds upon which the superintendent believes such dismissal is justified, and shall contain a plain and concise statement of the facts relied on to support the statutory grounds for dismissal.

If the statutory grounds specified are those specified in paragraph (a), (c), (d), (g), or (h) of subsection (1) of ORS 342.865, then evidence shall be limited to those allegations supported by statements in the personnel file of the teacher on the date of the notice to recommend dismissal, maintained as required in ORS 342.850.

Notice shall also be sent to the district school board, and to the Fair Dismissal Appeals Board.

Immediately after receipt of the notice, the teacher, the superintendent, or the district school board shall be entitled to request the advisory assistance of a panel of the Professional Review Committee by notice to the Superintendent of Public Instruction.

A copy of ORS 342.200 and 342.955 shall also be sent to the teacher.

(3) The action of the district superintendent takes effect on the 20th day after notice is given the permanent teacher as required in subsection (2) of this section, if approved by the district school board.

Notice of the board's action shall be given to the permanent teacher by certified mail.

(4) If a request for advisory assistance is made, the Superintendent of Public Instruction who shall immediately designate a panel of three members of the Professional Review Committee to assist the teacher, and the district superintendent and the district school board to resolve the issue.

The district superintendent shall supply the panel with a copy of the notice sent to the teacher under subsection (2) of this section.

342.905 Appeal procedure.

(1) If the district school board dismisses the teacher, the teacher may appeal that decision to the Fair Dismissal Appeals Board established under ORS 342.930 by filing with the board within five days after receipt of notice of the district school board's decision, notice of appeal with a brief statement giving the reasons for the appeal.

(3) As soon as possible after the time an appeal is filed, the Fair Dismissal Appeals Board shall set a time for the hearing. If the appeal is from a permanent teacher in a teaching position, the board shall include the teacher member. If the permanent teacher is in an administrative position, the administrative member shall sit in place of the teacher member.

The board shall be furnished by the Department of Education at the department's expense appropriate professional and other special assistance reasonably required to conduct a hearing and shall be empowered on behalf of the permanent teacher, the district superintendent and the district school board, to subpoena and swear witnesses, and to require them to give testimony and to produce books and papers relevant to its hearing.

(4) The Fair Dismissal Appeals Board shall conduct a formal hearing.

MAJOR POINTS OF TWO CASE STUDIES SHOWING SUBTLE VARIABLES IN THE DISMISSAL PROCESS

Introduction

It is sometimes assumed that dismissal cases with well-documented charges are assured of being approved through the fair dismissal hearings. This is not necessarily true. There is a tremendous number of variables other than documentation that come into play in a dismissal process.

Take, for example, the matter of evidence. If a principal has heard from his vice-principal or a department head that a teacher's performance is inadequate, he may wish to include that comment in his evaluative report for the teacher's file. But it is not admissible in a board hearing because it is considered "hearsay." Furthermore, the vice-principal or the department head may not testify to this statement because neither person had authored or signed the evaluation report. The information may be presented at the hearing, but only "under the rule" and not for consideration in the decision.

Another example, the matter of wording charges. If a charge is worded in a cause-and-effect manner, then the evidence must prove the entire statement valid or invalid. This is sometimes difficult. To prove, e.g., "The teacher is inefficient resulting in pupil dropout" is more difficult than to prove, "The teacher is inefficient."

Such variables are important to understand.

The Two Case Studies

A teacher, on tenure for ten years, and who had taught for thirteen years, was dismissed on the grounds of inadequate performance. Another tenured teacher, who had taught for fifteen years, was dismissed on the same general grounds--inadequate performance.

In both cases, poor communication with students and other related deficiencies were claimed to exist. Some students and parents were disillusioned and asked for transfers out of the teachers' classes. Upon receiving criticism and/or suggestions for improvement, one of the teachers felt "harassed." Administrators doubted that the teachers were willing to accept help.

One teacher, in his last thirteen years of teaching, had asked for transfers from three different schools. These had been granted, and he also had been transferred by administrative request twice. He had been negatively evaluated by several principals throughout the thirteen years. (Three of those years, under one principal, he had not been evaluated.) Prior to his last assignment, he had been warned in a documented, signed statement of his last opportunity to measure up to performance standards. He reportedly did not measure up to standards, and was not receptive to offers for assistance.

Another teacher requested a transfer on the basis of his unsuitability for teaching on the junior high level. (Earlier, he had been teaching at the senior high level.) He apparently was having differences of opinion with his principal as to performance expectancy. The request was denied. About nine months later, the teacher made the same request and was then

transferred for the following year. The teacher was told at the time of transfer that if similar problems occurred at this new assignment, his own style of teaching must be considered at fault. Soon after the teacher began at the senior high school, under a new principal who had not seen the teacher's file, the same kinds of problems reportedly arose.

In both cases, the school district felt there was sufficient evidence to take action for dismissal of the teacher. Both teachers received letters stating that the superintendent was going to recommend dismissal on the grounds of inadequate performance. The school boards in both districts accepted the superintendents' recommendations, based on the evidence and subsequent charges as well as on the substantiating advice of a Professional Review Panel. Both teachers appealed their cases to the Fair Dismissal Appeals Board. . . .

Because of the differences in evidence, and particularly the differences in how the evidence was presented before the Fair Dismissal Appeals Board, one case was decided in favor of the school district, the other case in favor of the teacher. The main difference in the two cases seemed to be in the way the charges were worded. In the case decided in favor of the school district, the charges were worded very simply and clearly; in the case favoring the teacher, the school district worded its charges in cause-and-effect statements which were difficult to prove in their entirety.

In the case of the first teacher (who lost his case), specific charges made by the school district included:

	Number of complaints
1. Inability to maintain classroom control	37
2. Lack of student involvement plan	31
3. No lesson plans (or only pages to be covered)	31
4. Teacher lecture method (with no attention to class activity)	15

(These charges had been received as "complaints"--and were compiled and tallied.)

In deciding this case in favor of the school district, the FDA Board weighed the valid evidence and the fair procedure against the weaknesses in the district's case. The chief weaknesses in the school district's case included:

(1) Lack of written standards of teacher performance

(2) Lack of measurable statistical data (student achievement, kind of grades and grade improvement, number of parental complaints and requests for student transfers as compared to other teachers, etc.)

(3) Questionable fairness of sending teacher's file to next assignment before teacher has chance to prove his competence

The chief strengths in the school district's case:

(1) The teacher had been given diversified assignments, both as to number of schools and kind of students.

(2) Requests for transfers had been granted.

(3) Evaluations had been in written form.

(4) Teacher signatures, as well as evaluation signatures, had been obtained.

(5) A variety of assistance had been offered to the teacher.

(6) A number of different evaluations from various areas had been utilized.

(7) There was so much uniformity in evaluations.

(8) A written warning and a deadline had been given to the teacher.

(9) Charges were simply written--with no cause-and-effect statements.

In the case of the second teacher (who won his case), specific charges made by the school district included [Notice the cause-and-effect statements,

especially (1) and (2)]:

(1) Ineffective communication with students, resulting in low morale and high incidence of dropout

(2) Limited teaching technique, resulting in lack of student motivation and interest

(3) Involvement of students in disputes between teacher and administration regarding quality of teaching performance

(4) Failure to meet an acceptable standard of student involvement in class activities

(5) Failure to exhibit sufficient change in performance as a result of supervisory program conducted by building administrators

The gist of the findings made by the FDA Board are capsulized in this direct quotation:

> There is evidence from which the Board could find that the teacher's communication with students was ineffective as charged in Specification (1), and that the teacher's teaching techniques were limited as charged in Specification (2). There was, however, no convincing, substantive evidence that such acts or omissions had resulted in low class morale and a high incidence of student dropout from his classes as charged in Specification (1), or resulted in a lack of student motivation and caused student "disinterest" as charged in Specification (2).

The decision in favor of the teacher seemed to be related to the wording of the charges, which, in the opinion of the Fair Dismissals Board, implied that the case was affected by the claimed cause-and-effect relationship between the teacher's ineffective communication and the poor student motivation, low morale, and high incidence of dropout. The fact that the district was criticized at once for being both too general and too specific was difficult to accept and would seem to indicate that much depends upon the construction of the wording of charges. As a district spokesman stated, "If we had just said, 'Your communication with students

is ineffective, period,' we wonder what the Fair Dismissal Appeals Board might have ruled."

The district is appealing the case through the state Court of Appeals, and feels obligated to do this because of:

(1) the ruling on inadmissible testimony [see page 7 of this report, second paragraph, i.e., the Introduction to his section]. It seems illogical that the word of the key person in the evaluative program may be ignored because of a technicality and that no new evidence, no matter how pertinent, may be introduced after the date a district files for dismissal.

(2) the dismissal board's ruling that the district not only has to prove inadequate behavior, but also . . . that the behavior had a detrimental effect.

(3) the need for clarification of the dismissal board's interpretation of the Fair Dismissal Statute itself in order to provide guidelines for developing a more satisfactory program of evaluation and supervision.

The final decision is uncertain. While the state Court of Appeals is legally empowered to reverse the decision of the Fair Dismissal Appeals Board, it is more likely that it may send their thinking regarding process and rulings back to the FDA Board and say, in essence, "Now make your decision in light of our judgment. Re-examine your decision."

The variables exemplified in these two cases are important to know. The next section presents more of these kinds of variables and gives suggestions for successful, thorough evaluation--which will help close "loopholes"--in the event of a dismissal hearing.

SUGGESTIONS REGARDING EVALUATION PROCEDURES

The Foreword to Suggested Personnel Policy Guidelines for School Districts* states the professional basis on which teacher evaluations should be made and the long-range objectives toward which they should be directed:

> A positive individual performance evaluation system must be a result of agreement and understanding between teachers and administration. It should foster initiative, encourage imagination, develop a sense of responsibility, and result in intensified efforts to meet the district's goals and objectives.

It is important to use a positive policy in the teacher evaluation program--i.e., to clarify the purpose of evaluation as basically a means to improve instruction of children, a "procedure of good faith!"

Because Bill 131 made annual written performance evaluations of teachers mandatory in districts with over 500 ADM, the Oregon Board of Education has prepared definite guidelines and time schedules* for programs of teacher supervision and evaluation. The issuance of these guidelines and schedules is an effort to improve procedures and to assist the school districts of Oregon to conform to the spirit and the letter of the law.

Evaluation Reports: Purposes and Suggestions

What evaluations CAN do:

--They can serve as a vehicle for improvement of instruction. The evaluation program should be geared to that 95 percent of teachers who will never be dismissal cases but who regard positive appraisal as an index to instructional improvement.

---

*Issued by Personnel and Community Relations Services, Oregon Board of Education, Salem, 1971.

--They can formalize the communication between teacher and supervisor.

--They can provide formal, written evidence that the teacher has been afforded due process of law, in case that evidence is ever needed.

--They can provide legitimate testimony of the teacher's competence. If the evaluation reports are written out, duly signed, and filed in the teacher's personnel file, they are legally admissible at a hearing if needed.

--They can serve as a reminder to a witness, such as a supervisor, of how he appraised a teacher. Sometimes there is considerable lapse of time between evaluation and need for testifying in the teacher's or the district's behalf.

What evaluations CANNOT do:

--They cannot serve as evidence per se. Unless the person making that evaluation is to testify verbally, or through deposition, that the contents of the evaluation are true, the evaluation report has been ruled worthless as admissible evidence.

--They cannot identify persons who can give legal testimony simply by naming them in the report. If a principal, for example, says Vice-Principal So-and-so told me such-and-such about the teacher's performance, that is considered hearsay and is not admissible as evidence. The vice-principal should have made and signed his own report and obtained the teacher's signature. It is recommended that authors, principals, and teachers (and anyone else involved) all sign the evaluative reports.

--They cannot be of much legal help unless they conform to the formal procedures as put forth by law (see pages 5 and 6, excerpts from the law; also, Appendix 2), and as explained in the following suggested "Do's and Don'ts."

Suggested Do's and Don'ts Regarding Teacher Evaluation and Dismissal

Do's

1. Do provide written standards of minimum teacher performance and expectancy.

2. Do inform teachers of district standards and requirements.

3. Do develop a program of positive teacher evaluation, involving teachers and selected students in the planning, in the interest of instructional improvement.

4. When student evaluators are used, do be sure the basis for such evaluation is positive, i.e., students' reactions aimed at helping the teacher appraise his own teaching effectiveness. These evaluations should go directly to the teacher rather than to the personnel file.

5. Do inform teachers, in writing, of any change in purpose of evaluation, from positive appraisal for instructional improvement, to critical appraisal for possible suspension or dismissal. (See Appendix 1 for sample of letter, "Plan of Assistance.")

6. Do inform teachers of personnel file and its use; of the existence of the new Fair Dismissal Law; of their rights and responsibilities. (Note: In a Fair Dismissal Appeals Board hearing, no file statements gathered before the date of tenure-granting were considered valid.)

7. Do involve a substantial number of diversified, qualified people in evaluation if a teacher is under fire. Procure signed evaluative statements.

8. Observe the time schedule and proper procedures for fair dismissal. See Appendixes.

9. Do use personal delivery or certified mail, obtaining a signed receipt, when sending the teacher a copy of the documented charges.

10. Do become knowledgeable of the law and its implications; e.g., what material from the personnel file is admissible for evidence in case of a hearing. (Persons making statements in the file must be present at the hearing to verify this evidence.) Be aware of the importance of obtaining signatures on evaluations.

11. Do be sure that charges are well documented in the personnel file, and if these charges are being considered for use in the hearing, that the teacher has a copy.

12. Do include measurable statistical data, where this is possible.

13. Do be specific as to days, dates, times, whenever possible.

14. Do word charges carefully--avoiding a cause-and-effect pattern. Choose the statutory charges carefully--e.g., inefficiency, inadequate performance, etc. (ORS 342.850)

15. Limit the charges to those you can prove by admissible evidence. Avoid charges that are hard to prove, such as insubordination because of differences in teaching style and teaching philosophy.

16. Do be sure your witnesses are available.

17. Do consult Dr. Milt Baum of the Oregon Board of Education for advice on kinds of charges contemplated and their relevance to the intent of the statute.

18. Do plan and prepare preventive measures carefully (job orientation, counseling, assistance, etc.) and state all important warnings in writing.

19. Do consider all possible alternatives to dismissal. (See section on "Alternatives to Dismissal.")

20. Do consider alternatives to tenure-granting.

21. Do select all new teachers carefully.

Don'ts

1. Don't give tenure to "borderline" teachers.

2. Don't regard the evaluation program as a negative, administrative witch-hunt.

3. Don't depend on statements placed in a personnel file during probationary period as evidence in case of a tenure hearing.

4. Don't refuse legitimate requests for transfers.

5. Don't send the personnel file ahead of the teacher to a new building; give the teacher a few months to prove himself.

6. Don't expect to use any testimonial as evidence at a hearing unless the person who originally made the charge is present at the hearing and can repeat it on the stand.

7. Don't expect to use "new evidence" developed since initiation of dismissal proceedings at the hearing.

8. Don't expect reports from the Professional Review Panel to be admissible as evidence at a FDA Board hearing. The Professional Review Panel acts only in an advisory capacity, and is not legally empowered to do anything beyond that role. The panel may give evidence at a "hearing" before the school board.

9. Don't use charges that may be difficult to prove.

10. Don't bring charges against a teacher during his first year in a building.

COSTS

Of some concern to the school district, the taxpayers, and the legislature is the matter of costs. What is the evaluation program costing the district? What is the price tag of the entire Fair Dismissal procedure?

Following are the estimates of costs in the two case studies presented in this report:

1. First case (decision in favor of school district)

Direct costs (exclusive of attorney's fees)	$3,000
Indirect costs	?
Estimated total:	$10 - 12,000

This report showed that no exact figures were available as yet--partly because the attorney's fees were not in, and partly because no reckoning had been made of the amount of time spent by the personnel director, the area administrators, or any of the principals. However, it was estimated that the case had cost between $10,000 and $12,000.

2. Second case (decision in favor of teacher)

Direct costs (attorney's fees, fees for Professional Review Panel, fees for Fair Dismissal Appeals Board)	$4,000
Indirect costs (personnel director's time, the time of persons testifying, cost of the appeal process. Not considered at all is the "tremendous amount of time taken by the building staff, . . . so $11,000 to $12,000 probably is a conservative figure.")	$7 - 8,000
Estimated total:	$11 - 12,000

ALTERNATIVES TO DISMISSAL

Whenever possible, a teacher in difficulty should be assisted--by motivating him to improve in his present teaching position, and/or by helping him find his proper place and kind of work. Everything positive should be done to help the teacher before having to take legal action to dismiss him. Following are a few suggestions for assistance. Depending on the individual teacher and the situation, one or several of these might be appropriate:

1. Subject or level reassignment. Most teachers have their forte--and each teacher should be placed where he can serve to the greatest advantage--whether that assignment be at a certain level, in a certain subject field, or as a member of a team specializing in a certain methodology. Advantageous shifts in assignment are often the clue to successful adjustments of the teaching personnel as well as to the all-around improvement of the school's educational program.
2. Teaching relocation. In some cases a teacher may be more motivated to improve his teaching in another environment, especially in another school. Relocating him may be worthwhile, particularly if the teacher himself asks to be transferred.
3. Relocation with other responsibilities. Sometimes a classroom teacher can be more successful in other branches of district employment, such as a central office position--e.g., in audio-visual supervision, curriculum planning, directing of resource

materials, etc.--particularly if the teacher's difficulty is not in lack of scholarly competence but in e.g., weak personal relationships.

4. "Intensive care" program. The "intensive care" program essentially means that everything possible will be done to help the teacher upgrade his performance, overcome his weaknesses which threaten his job. For example, resource materials, personnel, inservice sessions, visitations can be made available to him; college courses may be suggested for him to take; progress reports may be written up for the teacher by select evaluators who visit the classroom.

5. Salary adjustments. Notify the inadequate teacher that he has not been "producing" and that his salary will remain the same until he makes the needed improvements. Good results have been reported in some such situations.

6. Merit pay. Many school districts which once operated on a differentiated pay schedule related to merit but had phased it out in favor of a single standard, are now having second thoughts. The merit pay program is regarded by some staff members as a defense against incompetence among colleagues.

7. Aiding teacher in obtaining new job for which he is better suited. For example, a case was told of a young teacher who was apparently too introspective in personality to communicate well with high school students. After counseling with her principal and others, she moved into the field of hospital technician's work and pursued what became a successful scientific career in a large hospital laboratory.

In summary, the adamant and positive intent of administrators to deter the dismissal process through positive evaluation procedures and, as necessary, through alternatives to dismissal--will no doubt bring about positive results, and prevent some of the hassles, the time, and costs involved in legal hearings.

APPENDIX 1

Plan of Assistance
(suggested letter to teacher)

When the administration has identified a teacher with deficiencies which affect his or her adequacy as a teacher, a plan of assistance should be worked out in conference between the teacher and the supervisor. The teacher and the supervisor should explore together the teacher's deficiencies and formulate a plan to cure them.

The plan should strive to help the teacher meet the district's standards of competency which must apply to all teachers, generally, within the district. A plan could be stated in terms of measurable objectives if those objectives were reasonable and were met generally by teachers in like circumstances.

If the teacher and the supervisor cannot mutually arrive at a plan for improvement, the supervisor should prepare an assistance plan whereby the district will attempt to assist the teacher to make the needed improvement.

Copies of either the mutually agreed-upon plan and/or the assistance plan should be placed in the teacher's personnel file.

Appendix 1 (cont.)

Date

Inside Address
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Dear Mr. (Teacher, Principal, etc.)

RE: Notice of Need of
Special Assistance

Explanation of deficiency to put the teacher on notice of the district's observation of specific acts, omissions or weaknesses in teaching skills or effectiveness which do not meet the district's standards of competency.

Assistance plan of district or plan mutually agreed upon.
-Supervision planned.
-Special assistance/guidance, visits to other classrooms, special consultants, etc.
-Training--Inservice, additional courses.

Time for periodic progress evaluations.
1.
2.
3. more or less as needed.

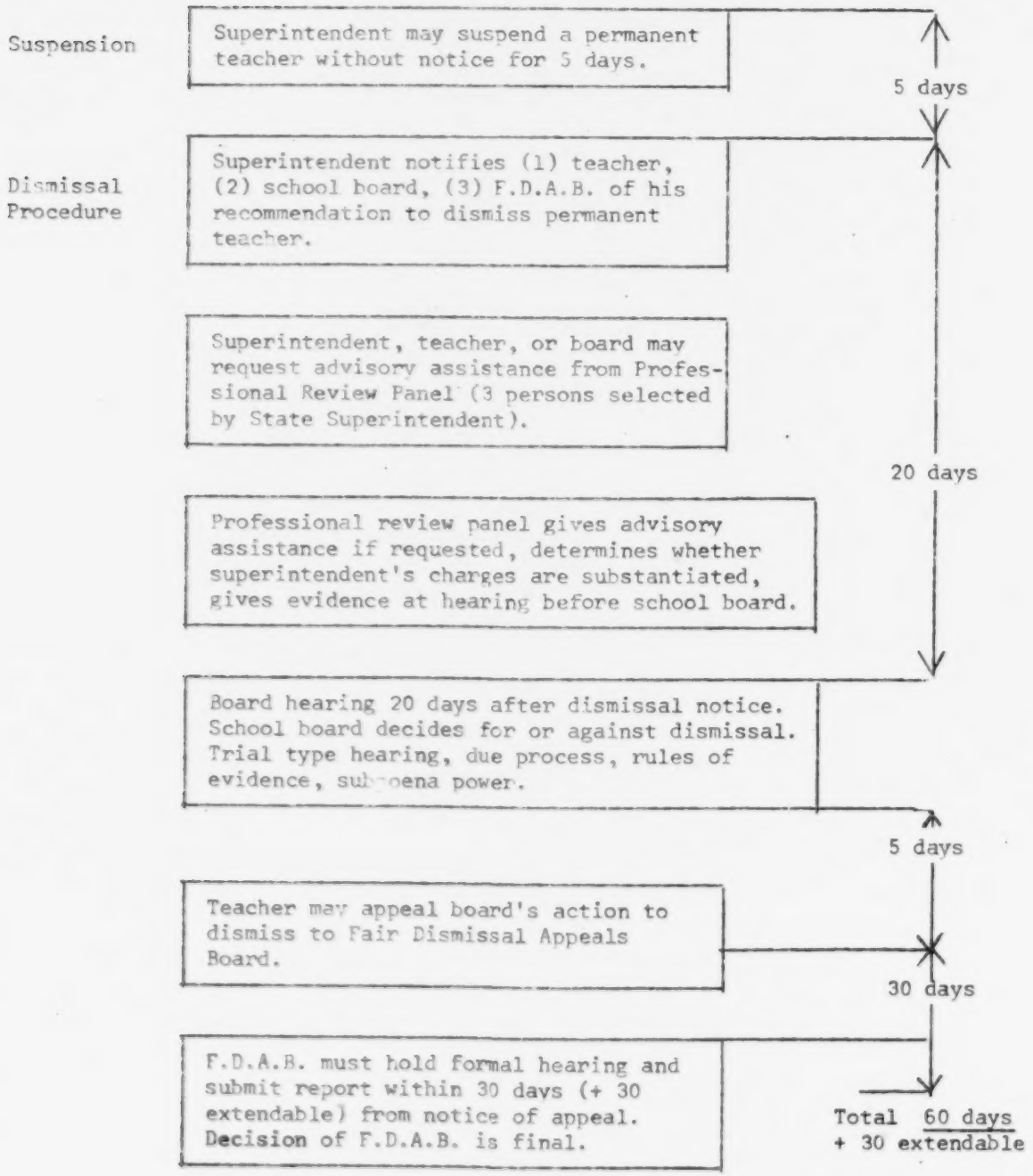
Final evaluation January 15.
-Review of assistance plan and the progress made by the teacher.
-Evaluation of the teacher to show progress and whether or not the teacher meets or will probably meet district standards.

_____
Supervisor's Signature

Original to: Teacher by certified mail
cc: District Superintendent
Teacher's personnel file
Supervisor

APPENDIX 2

Procedures and Schedule for Fair Dismissal
of Permanent Teacher and Probationary Teacher


Suspension
Superintendent may suspend a permanent teacher without notice for 5 days.
5 days
Dismissal Procedure
Superintendent notifies (1) teacher, (2) school board, (3) F.D.A.B. of his recommendation to dismiss permanent teacher.
Superintendent, teacher, or board may request advisory assistance from Professional Review Panel (3 persons selected by State Superintendent).
20 days
Professional review panel gives advisory assistance if requested, determines whether superintendent's charges are substantiated, gives evidence at hearing before school board.
Board hearing 20 days after dismissal notice. School board decides for or against dismissal. Trial type hearing, due process, rules of evidence, subpoena power.
5 days
Teacher may appeal board's action to dismiss to Fair Dismissal Appeals Board.
30 days
F.D.A.B. must hold formal hearing and submit report within 30 days (+ 30 extendable) from notice of appeal. Decision of F.D.A.B. is final.
Total 60 days
+ 30 extendable

Appendix 2 (cont.)

Appeal to court. Board and teacher have right to writ of review.	If dismissal decision of school board is reversed, teacher is reinstated and receives back salary from date of suspension.

PROBATIONARY TEACHER--Upon dismissal of a probationary teacher, he or she may merely request an informal meeting with the district school board.

APPENDIX 3

Suggested Letter by Superintendent
(for suspension and dismissal)

Suggested form of letter to be used for teacher suspension and dismissal, notice of superintendent's recommendation.

Date

Inside Address
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Dear Mr. _____:

As Superintendent of the _____ School District, it is my duty to inform you of the following personnel action.

Action: Suspension effective _____(date)_____.

Recommendation by the Superintendent to the district school to dismiss you _____(Date 20 days after notice)_____.

Statutory Grounds: (Use appropriate section or sections of ORS 342.865.)

Supporting Facts: 1. (State facts plainly and concisely which
2. consist of incidents of acts or omissions
3. of the teacher with necessary times and
4. places and name of observer, if relevant.)
5.
6. Etc.

A copy of ORS 342.200 and 342.805 to 342.955 is enclosed.

Sincerely,

Superintendent

Original to: Teacher by certified mail
cc: District School Board
Fair Dismissal Appeals Board
Teacher's personnel file

APPENDIX 4

Suggested Letter by School Board
(for dismissal)

Suggested form of letter to be used for notice of the d[illegible]t school board's action on dismissal recommendation.

Date

Inside Address
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Dear Mr. _____:

As clerk of the district school board of (name of school district), it is my duty to inform you that on (date) the board (approved - disapproved) the recommendation of the Superintendent in his notice of recommendation of dismissal dated _____.

You are hereby dismissed from your position as a (teacher/principal) in the (name) School District effective (date).

Sincerely,

Clerk of (School District Name)

Original to: Teacher by certified mail
cc: District School Board
Teacher's personnel file
Fair Dismissal Appeals Board